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REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS AND FOLLOW-UP TO THE WORLD CONFERENCE ON HUMAN RIGHTS

EFFECTIVE FUNCTIONING OF HUMAN RIGHTS MECHANISMS

Note by the United Nations High Commissioner for Human Rights

Addendum

Report of the Chairperson of the fourth meeting of special rapporteurs/representatives, experts and chairpersons of working groups of the Commission on Human Rights and of the advisory services programme concerning his activities from June 1997 to May 1998

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Introduction

1. The present report is a summary of the report submitted by the Chairperson of the fourth meeting of special rapporteurs/representatives, experts and chairpersons of working groups of the Commission on Human Rights and of the advisory services programme, Mr. Paulo Sergio Pinheiro, to the fifth meeting of this group concerning his activities from June 1997 to May 1998.

I. MEETING WITH THE CHAIRMAN OF THE COMMISSION ON HUMAN RIGHTS

2. During the fifty-fourth meeting of the Commission on Human Rights, in April 1998, Mr. Pinheiro met with Ambassador Selebi, the Chairman of the Commission. He assured the Chairman that the work of the special rapporteurs was guided by the principles of neutrality, non-selectivity and objectivity and that this was reflected in their working methods. He explained that they were independent experts and that their independence was reflected both in the form and the substance of their communications, inquiries and reports. This was a feature of the special rapporteurs' relations with all the parties concerned.

3. It must be very clearly understood by Member States that the special rapporteurs were agents not of a confidential but of public procedure: their reports were public. Hence their relations with the media were governed by the basic principle of transparency.

4. Mr. Pinheiro underlined that the special rapporteurs were organs of the Commission and, as such, they enjoyed the privileges and immunities, inter alia from search, seizure, prosecution and arrest, enjoyed by the United Nations. In order for the special rapporteurs to be able to carry out the mandates with which they had been entrusted by Member States, they must be entitled to all privileges and immunities in carrying out those mandates. This included immunity from legal processes of every kind, as provided in section 22 of the Convention on Privileges and Immunities of the United Nations. He conveyed the view of the group that the special rapporteurs must enjoy freedom of action in carrying out their mandates; any attempt to curtail that freedom was antithetical to the very ideal under which the special rapporteurs had been established by the Commission.

5. The Chairman of the Commission acknowledged the need to protect the mandates of the special rapporteurs and expressed his support for their work. Despite the importance of the role of the mandates and the contribution which the special rapporteurs made to the protection of human rights, Ambassador Selebi stated that there was a perception that the mechanisms of the Commission on Human Rights were not working as effectively as they could. The reasons for this were diverse and had developed over a number of years. In consequence, the Secretary-General had requested the High Commissioner for Human Rights to undertake a review of the human rights machinery of the United Nations. It was therefore judged appropriate for the Commission, as an intergovernmental body, to undertake its own review, parallel and in close cooperation with the High Commissioner, of the mechanisms of the Commission which would cover all bodies and mechanism which reported to it, i.e. the

Sub-Commission, all working groups and special rapporteurs. This process would provide support to the review undertaken by the High Commissioner.

II. MEETING WITH THE SECRETARY-GENERAL

6. Mr. Kofi Annan, Secretary-General of the United Nations, in accordance with the recommendation adopted at the fourth meeting, received Mr. Pinheiro on 11 November 1997. At the Secretary-General's request, the Legal Counsel was present, along with other members of the Secretariat.

7. Mr. Pinheiro sought to convey the concerns and expectations of the human rights community, and to find ways to coordinate human rights work in the United Nations system. He expressed concern over "contests" with regard to the special rapporteurs' mandates and described an emerging trend of attacks against the independence, impartiality and universality of the human rights system. In that connection, he referred to a draft resolution imposing various restrictions on the work of the special rapporteurs, to physical threats against the special rapporteurs and, most significantly, to the litigation involving the Special Rapporteur on the independence of judges and lawyers.

8. The Secretary-General expressed his support for the work of the special rapporteurs and the human rights community. He indicated that he was discussing with the High Commissioner for Human Rights ways to improve and strengthen the mechanisms of the Commission on Human Rights. The Secretary-General also confirmed that where there was a special rapporteur on an issue which was the subject of United Nations activity, the special rapporteur should be included in that activity. The Secretary-General concluded the meeting by stressing his support for the special rapporteurs and for human rights as an essential part of good governance and democracy.

III. MEETING WITH THE LEGAL COUNCIL

9. Following the meeting with the Secretary-General, Mr. Pinheiro met the Legal Counsel and very clearly stated the human rights community's concern about the situation facing the Special Rapporteur on the independence of judges and lawyers.

IV. MEETING OF CHAIRPERSONS OF TREATY BODIES

10. The Chairman of the fourth meeting represented the Commission's independent experts at the annual meeting of the persons chairing the United Nations treaty bodies, held in Geneva in September 1997 under the chairmanship of the Chairperson of the Committee on Economic, Social and Cultural Rights. He also attended the extraordinary meeting of the chairpersons of the treaty bodies held in Geneva from 25 to 27 February 1998. The Chairman would like to thank the Chairperson of the meeting of chairpersons, Mr. Philip Alston, and to express his appreciation for the opportunity to discuss joint concerns at the two meetings of that group. He is convinced that coordination requires agreement on the modalities for improving cooperation between the special procedures system and the treaty bodies.

V. MEETINGS WITH THE HIGH COMMISSIONER FOR HUMAN RIGHTS

11. Since the end of May 1997, the Chairman of the fourth meeting met three times with Mr. Ralph Zacklin, the Officer in Charge of the Office of the High Commissioner for Human Rights. He also met the High Commissioner for Human Rights immediately after her arrival in September 1997 in Geneva; in November 1997 in New York; in February 1998 and April 1998 in Geneva; and in May 1998 in Atlanta; he also had several telephone conversations with her. He also met the Deputy High Commissioner and the Chief of the Activities and Programmes Branch during each of his consultations in Geneva. Among other subjects, the Chairman discussed the matter of the report by the special rapporteurs as a group to the event commemorating the fiftieth anniversary of the Universal Declaration of Human Rights to be held in December 1998. It was underlined by several colleagues that it was important that the members of the group take the opportunity to express themselves collectively on the state of human rights in general and their work in particular, and that the preparation of a draft could be considered during the fifth meeting.

VI. PRESENTATION OF REPORTS TO THE THIRD COMMITTEE OF THE GENERAL ASSEMBLY

12. The Chairman requested the Office of the High Commissioner, through the Chief of the Activities and Programmes Branch, to instruct the New York office to provide more effective support when members of the group presented their reports to the Third Committee of the General Assembly. The Chairman also asked the Secretariat to consult the Chairperson of the Third Committee concerning the possibility of organizing an informal meeting between the special rapporteurs and interested delegations so as to make the rapporteurs' stay in New York more productive. He also expressed the group's dissatisfaction at the lack of time the Third Committee provided for the consideration of the reports submitted to the General Assembly.

13. The Chairman had also suggested that the group of special rapporteurs, during their stay in New York, should meet with the High Commissioner. A meeting was therefore held in November 1998 with some members of the group and it was an extraordinary occasion for a very open and informal exchange of ideas.

VII. MEETINGS WITH REPRESENTATIVES OF MEMBER STATES, WITH REGIONAL GROUPS AND COORDINATORS OF REGIONAL GROUPS

14. Since its last meeting the Chairman had the honour of expressing the views of the group, as contained in its report, to meetings of regional groups, to the coordinators of the five regional groups, to several Governments and to their ambassadors at more than 20 meetings held in Geneva and during the last General Assembly in New York. During these meetings he tried to convey the idea that the improvement of the special procedures was a cooperative undertaking between the group and Member States. He affirmed that the group considered it extremely important to establish a dialogue with Member States and that emphasis must therefore be placed on promoting interaction. To further that interaction, following the example of the meeting of chairpersons of the treaty bodies, at its fifth annual session the

group decided at its next session to hold a meeting with all interested Governments to discuss the issues concerning the improvement of its work.

VIII. PRESENTATION OF THE REPORT OF THE FOURTH MEETING AT THE FIFTY-FOURTH SESSION OF THE COMMISSION ON HUMAN RIGHTS

15. The Chairman presented the report of the fourth meeting at the fifty-fourth session of the Commission on Human Rights. This was an excellent opportunity to explain the character of the meeting and its fundamental role in stimulating innovation and reform. It was an exceptional occasion for sharing the group's practice and expressing its concerns.

IX. ACTIONS TAKEN IN CONSEQUENCE OF THE QUESTIONING OF THE WORK OF SPECIAL RAPPORTEURS

16. Following the proposal of the fourth meeting, the Chairman wrote on 17 June 1997 to Ambassador Miroslav Somol, the Chairman of the fifty-third session of the Commission on Human Rights, to note the concern of the group at the adoption of a decision concerning the report by the Special Rappporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr. Maurice Glèlè-Ahanhanzo.

17. Immediately after the fourth meeting, on 30 May 1997, the Chairman expressed to the Secretary-General the group's alarm at the litigation being pursued against Mr. Param Cumaraswamy, Special Rapporteur on the independence of judges and lawyers. Subsequently, he addressed to Ambassador Somol, to the Officer in Charge of the Office of the High Commissioner for Human Rights and to the High Commissioner, on several occasions, the group's concern over the various steps taken in the civil action against one of its members. The Chairman expressed in several press interviews and communiqués the group's distress concerning this civil action, which undermined the immunity accorded to a member of the group. In February 1998 the group published a statement, signed also by Philip Alston, expressing dismay and profound concern over the recent refusal by a court in a Member State to recognize that the Special Rapporteur on the independence of judges and lawyers enjoys the protection provided under the Convention on Privileges and Immunities of the United Nations. The group considers this decision to be an attack on the entire system of United Nations human rights mechanisms. If allowed to stand, it could have a chilling effect on the ability of independent experts to speak out against violations of international human rights standards and threatens to undermine the independence and impartiality of special rapporteurs.

18. The Chairman also expressed to interlocutors at the United Nations and to representatives of Member States concern at the obstacles encountered by the joint mission to the Democratic Republic of the Congo by Mr. Bacre Waly Ndiaye, Special Rapporteur on extrajudicial, summary or arbitrary executions and Mr. Roberto Garretón, Special Rapporteur on the situation of human rights in that country.

X. EXPERT CONSULTATION AT THE CARTER CENTER

19. The Chairman, along with the High Commissioner, a number of country and thematic rapporteurs and human rights experts from non-governmental

organizations and academic and research institutions, participated in a meeting held at the Carter Center in Atlanta, United States of America, on 7 and 8 May 1998, at the invitation of the Carter Center and the Jacob Blaustein Institute for the Advancement of Human Rights to discuss how, in partnership, the work of human rights mechanisms could be strengthened for greater effectiveness.

XI. ADMINISTRATIVE QUESTIONS

20. The group is convinced that to preserve and reinforce these mechanisms, it is necessary at the same time to address the need to improve the quality of its work and make it more rational and efficient. But the basic condition for the realization of this improvement is increased support to the special rapporteurs. It should not be forgotten that the holders of the mandates do not receive honorariums and often do not even have the support of a full-time assistant in Geneva.

21. Concerning the question of insurance and the presentation made by the Administration of the Office of the High Commissioner for Human Rights at the fourth meeting on this subject, the Chairman requested the Secretariat several times during his term that a concrete proposal be presented concerning the possibility of having health and life insurance provided to the special rapporteurs while on mission. The Chairman was informed that this proposal would finally be presented during the administrative session which would precede the fifth meeting.

22. The Chairman requested a definitive answer on whether special rapporteurs could be issued a United Nations laissez-passer while on mission. In this regard, he cited several incidents involving members of the group which demonstrated the inadequacy of a certificate. The Chairman was informed by the Secretariat that information about this question would also be provided at the next meeting.

23. The distribution of the special rapporteurs' reports continues to encounter problems, especially after the resurrection of the old rule to enforce simultaneous distribution in the six official languages of the United Nations. The Chairman received several complaints from his colleagues that their reports were not made available to participants at the fifty-fourth session of the Commission until the day before their presentation, which in effect rendered them virtually useless to both Governments and NGOs.

24. The Chairman wishes to thank his colleagues for their confidence and would like to extend his warmest congratulations and the offer of his collaboration to the colleague who will succeed him.

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